

Mr. SCOTT of Virginia: Mr. Speaker, I yield myself such time as I may consume. I rise in opposition to H.R. 4362. It amends the Federal aggravated identity theft statute to add tax fraud to the list of predicate offenses. The penalty for aggravated identity theft is a mandatory term of imprisonment of 2 years or, for a terrorism offense, 5 years. This bill would, therefore, subject more people to mandatory minimum sentences and, therefore, to all of the problems that have been repeatedly shown to be associated with mandatory minimum sentences.

Fraud and identity theft are a serious and growing problem. But what we do to address the problems of fraud and identity theft should be measured and effective. While I appreciate the sentiments and efforts behind H.R. 4362, I cannot support an effort that seeks to stop one injustice by applying another. Because of the mandatory minimum sentences included in H.R. 4362, this bill is not an appropriate or effective solution to the problem of identity theft.

I'm not saying someone who commits these crimes should not be sentenced to 2 or 5 years, or even more. But it is inappropriate and unjust for Congress to sentence an offender based solely on the name of the crime, years before any of the facts or circumstances of the case, or their role in the particular case and the character of the defendant, are known and taken into account.

Mandatory minimum sentences have been studied extensively, and have been found to distort rational sentencing systems, to discriminate against minorities, to waste the taxpayers' money, and often to violate common sense. Even if everyone involved in the case, from the arresting officer, the prosecutor, the judge, and even the victim, after all of the facts and circumstances of the case are presented at trial by the prosecution and defense, if they all conclude that the mandatory minimum sentence would be an unjust sentence for a particular defendant in a particular case, it must still be imposed. Mandatory minimum sentences, based merely on the name of the crime, remove the sentencing discretion and rationality from the judge, and often require him to impose sentences that violate common sense. This is what brings about the result such as girlfriends who end up with much more time than their crack-dealing boyfriends, and often have to serve terms of 10-20 years or more, teenagers having consensual sex with their girlfriends getting 10 years, or a recent case of Marissa Alexander in Florida, a mother of three and a graduate student, who was sentenced to a mandatory minimum of 20 years for discharging a gun to warn off an abusive husband during a dispute. A warning shot. Ironically, if she had intentionally shot and killed him under those circumstances, the maximum penalty for voluntary manslaughter in that State is 15 years. If you want to know how those mandatory minimums pass, just watch this bill.

I offered an amendment at the committee markup of the bill which would have provided a maximum sentence of 4 years and 10 years instead of the 2 or 5, respectively. That way, offenders whose conduct warranted it could be sentenced to higher amounts of time, if it was appropriate, but for those whose conduct did not, such as bit players and those who play a minor role in a minor offense, the judge could arrive at a proper sentence. It is the height of

legislative arrogance, in my view, for Congress to conclude that it has a better perspective to arrive at an appropriate sentence in advance, knowing nothing about the facts and circumstances of the case, than a judge charged with that responsibility who has heard all of the facts and circumstances of the case.

In addition, Mr. Speaker, the Department of Justice has recently expressed concerns with the bill which indicate that we should have had a legislative hearing on the bill to hear from stakeholders and those who have concerns about the legislation. Even though I support the intent of the sponsors to do more to address identity theft, for the reasons stated, the 2 and 5 year mandatory minimum sentences make this bill indefensible, and I cannot support it.